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The Solicitors' Journal

(ESTABLISHED 1857.)

*** Notices to Subscribers and Contributors will be found on page iv.

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Current Topics.

The Duke of Gloucester.

WHILE THE announcement that His Majesty has been pleased to direct letters patent under the Great Seal granting to his son PRINCE HENRY, and the heirs male of his body, the dignities of BARON CULLODEN, EARL OF ULSTER and DUKE OF GLOUCESTER, will be received with general satisfaction by the people of this realm, it may nevertheless have considerably puzzled the man in the street who, perhaps not unnaturally, regards the grant of a dukedom to a Royal Prince in the nature of a derogation rather than an accession of dignity. The apparent anomaly was explained by the late Professor FREEMAN in his very learned little book "The Growth of the English Constitution," where, after pointing out that the eldest son of a peer remains a commoner as long as his father lives, and that whatever titles he bears are simply titles of courtesy carrying with them no political privileges above other commoners, he proceeds as follows: "As the children of the peer have no special advantage, so neither have the younger children of the King himself. The King's wife, his eldest son, his eldest daughter, his eldest son's wife, all have special privileges by law. His other children are simple commoners, unless their father thinks good to raise them, as he may raise any other of his subjects, to the rank of the peerage." In a note, FREEMAN elaborated the point thus: "As the law of England knows no classes of men except peers and commoners, it follows that the younger children of the King—the eldest is born Duke of Cornwall—are, in strictness of speech, commoners, unless they are personally raised to the peerage. I am not aware that either case has ever arisen, but I conceive that there is nothing to hinder a King's son, not being a peer, from voting at an election or from being chosen to the House of Commons, and I conceive that, if he committed a crime, he would be tried by a jury. Mere precedents and titles have nothing to do with this matter, though probably a good deal of confusion arises from the very modern fashion—one might almost say the modern vulgarism—of calling all the children of the King or Queen 'Princes' and 'Princesses.' As late as the time of George the Second, uncourtly Englishmen were still found who eschewed the foreign innovation, and who spoke of the Lady Caroline and the Lady Emily, as their fathers had done before them." It will thus be seen that the new dignity conferred upon PRINCE HENRY—so we may still describe him *pace* FREEMAN—gives him a new status, that of a peer, which will entitle him to sit in the House of Lords and take an active share, should he so desire, in the affairs of the nation. Wisely, perhaps, Royal peers have generally refrained from an active participation in political matters, and, no doubt, the new DUKE OF GLOUCESTER will follow their example, but of his right to intervene in debates in the House of Lords there can be no question.

The late Lord Cave and the Privy Council.

WITH THE great opportunities enjoyed by the late Lord CAVE in estimating the value of the work of the Judicial Committee of the Privy Council, any views of his on the subject are worthy of the greatest respect. It is, therefore, interesting to learn from a letter to *The Times* from Professor J. H. MORGAN that in a paper written not long before his death Lord CAVE advanced a weighty plea for the maintenance in all its acumenical dignity of the appellate jurisdiction of the Judicial Committee, and defended it against certain sections of overseas critics. Of the greatness of this Imperial court there can be no question; no other tribunal has ever exercised so extended a jurisdiction and been the exponent of so many and such widely different systems of law; but all the same it is anomalous in that its appellate jurisdiction is, with insignificant exceptions, confined to dominion and colonial litigations, while for Great Britain and Northern Ireland the House of Lords is the ultimate court of appeal. It is understood that Lord CAVE had, like Lord HALDANE, considered the question of a fusion of those tribunals. Whether or not he favoured it we are not informed, but we think there can be little doubt that only one great court of appeal should function for the whole Empire; and some day, we feel certain, such a tribunal will be called into being whose judgments will carry still greater weight than those of the two existing courts, great though the force of these is.

The Way of the Navy.

THE *Royal Oak Case* has excited general interest, besides a good deal of controversy which is to be deplored. There ought surely to be other means for quelling a tea-cup storm than a formal court-martial. The court-martial proceedings, however, have been instructive, and in some respects, but most decidedly not in others, the ordinary courts of law may learn a lesson from them. Judging by the newspaper reports, it appears that a naval court-martial, and naval witnesses, like to keep to the main issues, to avoid discursive cross-examination and to eschew the hypothetical question. We all know that what the soldier said is not evidence, and the naval trials have reminded us that neither is what the sailor may have thought; yet it is common enough to hear witnesses asked what they thought someone else meant, or what would have been the effect of something, if it had happened, upon someone else's mentality. High authority once ruled that the state of a man's mind may be as much a fact as the state of his digestion. This is obvious; but what is forgotten is that in the majority of cases the one is as irrelevant, and as inadmissible in evidence, as the other. In certain cases involving such matters as false pretences, the fact that a witness thought this or that is most material, and he may equally be asked what he would have done if he had thought otherwise. Generally, however, witnesses would be well advised to follow the example of the naval witness who said: "I can't answer a suppositious

question," or of the other who replied: "I cannot hope to look into the bandmaster's mind," and the court should support such witnesses. The naval court-martial was right, too, in declining to allow a question to be put which was in effect the very question which the court had to decide. This is too often accomplished by adroitness in the framing of a question so that it passes muster and achieves its object of getting a witness to express an opinion when he ought to confine himself to recounting facts, or, if he be an expert, to recounting facts and demonstrating inferences which may be drawn from them.

Claims Adverse to Landlord: A Tenant's Duty.

THE CLAIM of a Mr. ANGELL to a large estate in South London now in the occupation of the Ecclesiastical Commissioners and their tenants was promptly met by an *ex parte* injunction obtained by the latter body, forbidding the claimant to interfere between them and their tenants. This result cannot have come as a particular surprise to lawyers who read of Mr. ANGELL'S proceedings. The matter, however, opens up a question of general interest. Supposing a tenant is suddenly given express notice of a claim adverse to his landlord, and required to pay rent to the claimant, what advice should be given to him as to his proper course? In the ordinary case, it will be a matter of entire indifference to the tenant whether he pays his rent to A or B, but he will strongly object to the possibility of having to pay it twice over. In the circumstances there can hardly be doubt that, so long as the tenant remains in quiet possession, his duty lies in contract to the person who has, as landlord, yielded that possession to him and maintained it for him in accordance with express or implied covenant. The case of *Geen* v. *Herring*, 1905, 1 K.B. 152, may raise some doubt as to whether a claimant to property ought to make the weekly tenants of the party in possession of the rents defendants in an action for the recovery of the land. A tenant who is not made a defendant and served with a writ should continue payment to his landlord, for the simple reason that he has no answer to the claim for rent, the notice given him by a stranger having no effect on his contract. If his landlord is ultimately dispossessed, the latter's ordinary tenants, having no better title, may be so with him, and probably those who would have been his statutory tenants if he was in lawful occupation (distinguishing *Reynolds* v. *Bannerman*, 1922, 1 K.B. 719, where the statutory tenancy was the continuation of a rightful one). As against mere disseisors or trespassers, however, there can be no action for use or occupation: see *Jones* v. *Carter*, 1846, 15 M. & W. 718 (and as to mesne profits, see *Brandreth* v. *Shears*, 1883, W.N. 89), so that the rightful claimant could not demand occupation rent against the disseisor's tenant, nor, probably, make claims on the latter at all until he had issued a writ against him. In such event, possibly the tenant might be best advised to withhold rent until directed to whom to pay it by an order of the court, for he might be liable for mesne profits. In the ordinary case persons litigating for the possession or retention arrange that tenants shall not be prejudiced. Possibly, however, a successful plaintiff might now require vacant possession as against his disseisor's statutory tenants.

Scriveners and Solicitors.

IN *Bonham* v. *Maycock*, 72 SOL. J., p. 254, a mortgagor of a farm subsequently paid off the mortgage in full to the solicitor who had carried through the transaction. The solicitor, who had also acted for the mortgagee, proved dishonest, and neither delivered up the money to the mortgagee nor the deed to the mortgagor. In an action by the mortgagee against the mortgagor, after the death of the solicitor, for the money due under the mortgage deed, counsel for the mortgagor contended that if a scrivener or solicitor was allowed to retain the security, and if it was one which did not require re-conveyance, then authority to receive interest or principal could be conferred by implication. In his judgment Mr. Justice ROCHE said that this contention depended upon cases relating to scriveners, and the question was whether those cases were applicable to solicitors. His Lordship referred to a number of cases, and held that upon the facts of those cases a solicitor was not a scrivener. Apart from their business of money-lending, scriveners once claimed the monopoly, within London and a radius of three miles, of the preparation of all documents, charters and deeds which by the common law or custom of the Realm required to be sealed. An apprenticeship of seven years had to be served before a man was entitled to practice as a scrivener, and by 1497, before entering upon apprenticeship an examination in grammar had to be passed. A company of scriveners was incorporated in 1617, and they styled themselves the "Freemen of the City of London using the Art or Mistery of Scriveners . . . commonly called the Writers of the Court Letter of London." The company gradually fell on evil days, however, more and more of their work passing into the hands of the attorneys, and by 1748 the membership was reduced to about fifty. A last effort was made to recover their position by endeavouring to compel solicitors to legalise their position by becoming members of the Scriveners' Company; litigation between the two rivals lasted for eleven years, the solicitors emerging victoriously. In one of the test actions, tried in December, 1760, a Mr. ELLIS, referred to in BOSWELL'S "Life of Johnson" as probably the last of the profession of scriveners, was called as a witness. BOSWELL described the business of scriveners as one "no longer carried on separately, but is transacted by attornies and others."

Public Interest in Ecclesiastical Law.

A RARE manifestation of the above preceded the recent decision of the Privy Council upon the proposed union of the benefices of St. Anne's and St. John's, Lancaster. Both churches were originally chapels of ease to the parish church of Lancaster, and St. John's was built about 1755 as the "Corporation Church" of the county borough. The Ecclesiastical Commissioners recently made up the annual income of each church to £350, and decided that a secured endowment of £450 a year would suffice for the incumbent of the united benefices. Petitions against the scheme were signed (1) by the incumbents of a number of local churches; (2) by over 10,000 members of the congregations. The Bishop of Manchester appointed a commission to enquire into the scheme, and the Archdeacon of Lancaster later intimated that the Bishop considered the case for the union was proved mainly on geographical grounds, so that to maintain two churches close together was a bad waste of man-power. The Finance Committee of the Parochial Church Council of St. Anne's appealed to the Privy Council on the following grounds: (1) if St. Anne's were absorbed in St. John's it would be a grave mistake, and a serious drawback to the church work in the borough, as the former parish was a stronghold of Nonconformist activity, and to abandon it would be nothing short of a disaster and complete surrender to Nonconformity; (2) there was no assurance that the congregation of St. Anne's would go to St. John's, but many would become Nonconformists. The Commissioners' case was (1) that there was no question of giving over St. Anne's to Nonconformity; (2) the proposed union was in the best interests of religion in England, as the present circumstances of the Church of England make it wasteful to maintain two parishes with such small endowments and areas of activity, and with the churches in such close proximity. The Judicial Committee (Lords PHILLIMORE, CARSON and BLANESBURGH) allowed the appeal, on the ground of no immediate urgency—both churches being full. Their decision was without prejudice to any further application, and did not imply that the union might not in a few years be desirable.

Obstruction by Wreck.

I.

Two lines of decisions govern the question of liability for the above. In *The Dee Conservancy Board and John Summers and Sons, Limited* v. *McConnell and another*, 1928, W.N. 60, the plaintiffs claimed damages at common law (*a*) for the cost of removing an obstruction, alternatively (*b*) for nuisance. The facts were as follows: The defendants owned the wooden ketch "William Shepherd," which had sunk alongside a wharf held by the plaintiff company as licensees from the Board. The defendants had at once given notice of abandonment to their underwriters, who refused to accept it. At the same time, however, the underwriters agreed to treat the notice as service of a writ, so far as the position of the defendants was concerned. As she lay the ketch obstructed the approach to the wharf, and also the general navigation of the river, so that both plaintiffs—the Board and the company—had her removed at a joint cost of £1,569 18s. 9d. The learned judge of the Liverpool Court of Passage found that the ketch sank owing to the defendants' negligence, and he held that the Board were entitled to recover their expenses of clearing the obstruction. As regards the company, he held that, as there was no damage from impact to the wharf and no loss had been proved, the defendants were not liable. The defendants appealed against the judgment in favour of the Board, and the company cross-appealed against the dismissal of its claim. It was contended for the defendants that the Board could only proceed under its statute, viz., the Dee Conservancy Act, 1889, incorporating the Harbours, Docks and Piers Clauses Act, 1847, s. 56. This section provides for the removal of obstructions such as wrecks from any harbour, dock or pier, and for the recovery of the expenses thereof before the magistrates. This remedy, however, no longer remained after the defendants had abandoned the ketch. It was also argued that the company's proportion of the cost was not recoverable from the defendants. The Court of Appeal (Lords Justices Scrutton and Sankey and Mr. Justice Russell) held that by abandoning the wreck the defendants could not evade their common law liability for their negligence whereby the ketch was sunk. As the wreck obstructed both the navigation of the river and the approach to the wharf, the reasonable cost of its removal was recoverable by both plaintiffs as damages. The appeal was therefore dismissed and the cross-appeal allowed, judgment for the one sum being given in favour of both plaintiffs.

This decision followed that in *The Ella*, 1915, P. 111, in which the Southampton Harbour Board sued the London and South-Western Railway Company (as it then was) to recover the expenses incurred in dispersing the wreckage of the barge "Rosina." The latter had been sunk in the channel off Netley Hospital, within the jurisdiction of the Harbour Board, through a collision with defendants' steamship "Ella." The defendants admitted that the collision was due to the negligence of their servants in charge of the "Ella," and that as the "Rosina" lay she was in a position to cause obstruction to navigation. The defendants denied, however, (*a*) that they were guilty either of nuisance, or any breach of duty; (*b*) that the plaintiffs had any cause of action against them. Sir Samuel Evans, in his judgment, observed that the barge had been abandoned without delay by her owners and their underwriters. It was essential for the safe navigation of the channel for the plaintiff board to light, buoy, mark, remove, and disperse the wreck by blowing it up. Under the Southampton Harbour Act, 1863, incorporating the Harbour, etc., Clauses Act, 1847, the Board not only had the powers but were under a duty to remove obstructions and keep the channels fit for navigation. The remedies of the Board were not confined to those given by the above-mentioned s. 56 of the Act of 1847. That section only deals with the owner of the wreck and makes him liable while he remains in law the owner, whether he has been innocent or at fault. In the case before him, it made no difference that the wreck never had belonged to the defendants. It was immaterial whether, by the negligence of the defendants, it was their own or someone else's vessel which sank and became a wreck. The learned President further held that the negligent navigation of the "Ella" was a breach of the defendants' duty to the plaintiff Board, and the damage had to be measured by the expenses which the latter not only had a right but were bound to incur. Moreover, by the defendants' negligence a public nuisance was created by the obstruction of the channel, and the expense of abatement—either in pursuance of a right or in performing an obligation—constituted special damage.

An example of the other line of decisions is that of the House of Lords in *Barraclough* v. *Brown and others*, 1897, A.C. 615. The defendants had owned the steamship "J. M. Lennard," which capsized and sank in the River Ouse and became an obstruction to navigation. The underwriters, having failed to raise her, accepted a notice of abandonment and settled with the owners, the defendants, for a total loss. Thereupon the Undertakers of the Navigation of the River Aire and Calder exercised their statutory powers of removal under the Aire and Calder Navigation Act, 1889, s. 47, which enlarges the above-mentioned s. 56 of the Act of 1847. Having spent £2,778 8s. 8d. in abortive attempts to refloat the ship, the Undertakers blew her up at a cost of £500 0s. 3d. Their secretary, the plaintiff, accordingly sued in the High Court for the total sum of £3,278 8s. 11d. Mr. Justice Mathew held that the Undertakers had no other remedy than that given them by their statute—viz., to proceed in a court of summary jurisdiction. The Court of Appeal (Lord Esher, M.R., and Lords Justices Lopes and Rigby) upheld this judgment, which was affirmed by the House of Lords. All the courts, apparently, felt that, in construing the Aire and Calder Act, 1889, they were bound to follow the House of Lords decision in *The Crystal*, 1894, A.C. 508—viz., that the Harbour, Docks and Piers Clauses Act, 1847, s. 56 (above), confers exclusive powers on courts of summary jurisdiction, and that in claims for obstruction by wreck the High Court can only adjudicate by way of appeal.

The above case of *Barraclough* v. *Brown* was distinguished, however, in the first-named case above, and the trend of modern decisions appears to be that the statutory remedy is not exclusive, and that if a decision of the High Court is desired, the common law remedy is available.

(To be continued.)

Arrears of Cumulative Dividends.

A question of interest and importance to holders of shares which carry a fixed cumulative dividend was raised and decided in the recent case of *First Garden City* v. *Bonham-Carter*, 1928, 1 Ch. 53.

In that case the articles of association of the company provided for the payment upon all the ordinary shares of a cumulative dividend not exceeding 5 per cent., but no provision of any kind was made as to the manner in which the arrears were to be paid off. The ordinary shares had been issued from time to time over a number of years, and the question arose as to the rights of the holders of such shares to participate in the paying off of a certain portion of the accumulated arrears. It was not unreasonably contended for the holders of the shares issued on the earliest dates that they were entitled to a priority over the holders of shares issued on later dates, and that they were entitled to exhaust the fund available for paying off the arrears. It was held, however, that no such priority exists, and that the fund available for paying off the arrears must be rateably divided amongst the holders of all the shares in proportion to the amount of arrears owing to them.

The decision purports to be an application of the principle established in *In re Wakley*, 1920, 2 Ch. 205—that the persons who hold the shares in the year in which a dividend is declared upon them are entitled to the full amount of the dividend even though it be a fixed cumulative dividend, and even though its amount includes accumulated arrears. In that case cumulative preference shares had been specifically bequeathed by a father to his son; at the time of the father's death the dividend was in arrear, but after his death the company was able to declare a dividend large enough in amount to cover not only the dividend for the current year, but also the arrears of dividend. It was held by the Court of Appeal (reversing the decision of PETERSON, J.) that the personal representatives of the father were not entitled to claim an apportionment of such dividend in respect of the arrears accumulated during the lifetime of the testator. It is clear that a similar result would have followed if the shares had been settled upon the father for life and upon the son in remainder. If no dividend is actually declared during the existence of a life tenancy, then the personal representatives of the life tenant cannot claim any portion of arrears paid off after its cessation (see the judgment of ASTBURY, J., in *Re Sale*, 1913, 2 Ch. 697, which was approved in *Re Wakley*).

It is not easy to agree that the recent case is a correct application of this principle—that a cumulative dividend is "one dividend and not a cumulation of separate dividends." In his judgment in *Re Wakley*, YOUNGER, L.J., expressed the view that this principle "does *not* deprive the holders of shares issued on the earliest dates of their right to receive the whole fund available for dividend." But TOMLIN, J. treated the expression as *obiter*, and added, "I can find nothing in the nature of a priority . . . The dividend, having regard to *Re Wakley*, is quite clearly a dividend for the current year, and it seems to me consistent with the decision of the Court . . . that I should hold that, in the absence of something which gives an express priority to one year over another, all the shares have to rank *pari passu* in regard to their total claim in respect of all the years."

Concurrent Jurisdiction in Aquisition of Land.

A QUESTION as to the co-ordination of the functions of the courts and non-legal tribunals has been considered by His Honour Judge HAYDON, K.C., in *Kent* v. *Loughborough Corporation*, at Leicester County Court. By a Provisional Order of 1924, the Corporation were empowered to put in force the compulsory clauses of the Lands Clauses Acts, as modified by the Acquisition of Land (Assessment of Compensation) Act, 1919. The object was to purchase and take (*inter alia*) the plaintiff's shop and dwelling-house for the purpose of street widening, and the Order was confirmed by the Provisional Orders Confirmation (No. 6) Act, 1924. On the 2nd May, 1927, the corporation gave notice to treat, and on the 17th June they applied for an official arbitrator, who was duly appointed on the 27th June. On the 17th August the plaintiff sent in a claim based upon the assumption that his occupation was to be summarily determined, and that his stock would have to be sold under disadvantageous circumstances. The covering letter reserved the plaintiff's right to alternative accommodation under the Rent, etc., Act, 1920, s. 5 (i) (*e*), as amended by the Act of 1923. It was contended before the official arbitrator that he had no jurisdiction unless he was satisfied that there was alternative accommodation, but he was not asked to state a case as to what contingencies under the Rent Acts he was entitled to consider. On the 17th October the official arbitrator awarded the plaintiff £679 12s. and £30 costs. Apprehending that the sheriff would eject him by warrant under the Lands Clauses Act, 1845, s. 91, the plaintiff, on the 28th October, issued a plaint, claiming (1) a declaration that his dwelling-house was within the Rent, etc., Acts; (2) an injunction to restrain the corporation from interfering with his quiet enjoyment of the premises. On the 31st October the corporation paid to the plaintiff (not into court) the amounts awarded, but gave no undertaking that they would not interfere with the plaintiff's possession pending the trial of the action. On the 7th November the plaintiff accordingly applied, *ex parte*, on affidavit, and obtained an interlocutory order in the nature of an injunction. At the hearing of the action on the 22nd November, it was pointed out on behalf of the corporation that (1) they had offered alternative dwelling-house accommodation; (2) after the 3rd December they were under contract to deliver up vacant possession of the house, and if the injunction remained they would be liable in damages.

In his reserved judgment, the learned judge stated that *Parry* v. *Harding*, 1925, 69 SOL. J. 162, shows that where compulsory powers of acquisition are exercised—for the purposes merely of road widening—the provision of alternative accommodation is a condition which must be complied with prior to an order for possession. The case for the corporation, however, was that they had the option (1) of proceeding under the statutes enabling compulsory acquisition, and so to obtain delivery from the sheriff, subject to compensation; (2) of proceeding under the County Courts Acts and so to obtain possession subject to the Rent, etc., Acts, but without paying compensation. The choice having been made of the former procedure—overriding and superior to the Rent Acts—the county court had no jurisdiction to interfere. His Honour held, however, that, although the confirmation of a Provisional Order places it in the position of a public general Act, this was provided against by the Rent Act, 1920, s. 12 (1) (i). This defines a statutory order as being one of the matters in respect of which a local authority must provide alternative accommodation under the same Act, s. 5 (i) (*e*). It had also been contended that the matter was *res judicata* under the Acquisition of Land, etc., Act, 1919, s. 6, viz.: that the decision of an official arbitrator upon any question of fact shall be final and binding upon the parties. His Honour pointed out (1) that no finding of fact was in issue, as he did not even know the constituent figures making up the total award; (2) that the official arbitrator had no power to decide any question of law. A further point as to the mutually exclusive nature of the compulsory procedure, and that in the county court, was that under the latter, the plaintiff might have been turned out without compensation. A judge, however, would only make an order under the 1920 Act, s. 5, if he thought it reasonable—and time given for the plaintiff to wind up his affairs might compel the corporation to bargain for earlier possession. It appeared from *Williamson* v. *Pallant*, 1924, 68 SOL. J. 617, that the Rent Acts cannot be converted into a basis for the establishment of a value of goodwill, and it was suggested that the present plaintiff ought not to be allowed to hold up a scheme of great public importance and expose the corporation to damages. Nevertheless, if an application for possession were made, the learned judge held that he could not substitute the payment of money for the compliance with a statutory condition, i.e., as to alternative accommodation. As the premises were within the Rent Act, the declaration was made and the injunction granted, with costs, on Scale C.

Application was made on behalf of the corporation that it should be a condition that the money be paid back into court, as it was paid on the basis that plaintiff would go, and he had not gone. It was objected on behalf of the plaintiff that the corporation had chosen a different procedure, and the question of money was never before that court. His Honour remarked that the money was handed over without request after an action for an injunction had been started and though he did not think it reasonable to obtain money on the basis of going out, but still to retain possession, he had no power to make a further order.

A Conveyancer's Diary.

Dealings as between a Tenant for Life and his Settled Estate.

Section 68 of the S.L.A., 1925, enables dealings affecting settled land to be effected with the tenant for life or with any persons of whom the tenant for life is one. Thus a sale, grant, lease, mortgage, charge or other disposition of the settled land or of any easement, right or privilege over the same may be made to him: *ib.*, sub-s. (1) (*a*). Capital money may be advanced on mortgage to him: *ib.*, (*b*); a purchase may be made from him of land to be made subject to the limitations of the settlement: *ib.*, (*c*); or an exchange may be made with him of settled land for other land: *ib.*, (*d*).

The only dispositions (other than enfranchisements and exchanges, now obsolete) authorised by S.L.A., 1890, s. 12 (which s. 68, *supra*, replaces with extensions), were sales and exchanges. Thus a lease or a mortgage in favour of the tenant for life was not thereby authorised, but can now be effected under s. 68.

The tenant for life is, as regards both his powers and the settled estate, in a fiduciary position. Hence certain safeguards are necessary. These safeguards are provided for by making the powers of the tenant for life in reference to negotiating and completing the particular transaction exercisable by the S.L.A. trustees. They *may* exercise those powers in the name and on behalf of the tenant for life: s. 68 (2); cf. L.P.A., 1925, s. 8 (1).

In practice, the better plan seems to be to convey, lease or mortgage in the names of the S.L.A. trustees and to show how the trustees come to be the persons effecting the disposition.

Section 68 applies notwithstanding that the tenant for life is one of the S.L.A. trustees, except where there are dealings with a body of persons including a S.L.A. trustee not being the tenant for life, in which case the approval of the court must be ultimately obtained: *ib.*, sub-s. (3).

Thus the section will apply in the following case: T is the tenant for life; T and X are the S.L.A. trustees, and T is the intending purchaser, mortgagee or lessee. T and X would be the parties of the one part and T the party of the other part. The covenants by the tenant for life contained in the conveyance, mortgage or lease would be enforceable by X: s. 68 (2).

But the section would not apply in the following case: L is the tenant for life; L, Y and Z are the S.L.A. trustees, and L, Y and P are the intending purchasers, mortgagees or lessees. In such a case the approval of the court would be necessary: the reason, no doubt, is that not only is L a member of each class, but the conflicting interests cannot be severed, for they include interests of strangers to the settled estate.

Landlord and Tenant Notebook.

Exclusive Jurisdiction of the County Court in Rent Restrictions Applications.

Under s. 2 (6) of the Rent Restrictions Act, 1920, it is provided that any question arising under sub-ss. (1), (2), or (3) of s. 2, of the Act, is to be determined, on the application either of the landlord or tenant, by the county court, and that the decision of that court is to be final. The precise effect of this section has been for some time a matter of doubt, especially in cases where questions are involved which are apparently outside sub-ss. (1), (2) or (3). The recent decision of a Divisional Court, in *Elvington Tenants Ltd.* v. *Hatton* (*Times*, 31st March, 1928), however, may be regarded as authoritatively determining the effect of s. 2 (6), and the extent of its operation.

In the above case the landlords of certain premises within the Rent Restrictions Acts had served a notice of increase of rent on the tenant, the increases being on account of rates under para. (*b*), on account of the 15 per cent. increase under para. (*c*), and on account of the 25 per cent. increase under para. (*d*) (ii), of s. 2 (1) of the Rent Act, 1920. The tenant, however, considered that the landlord was not entitled to the whole of the 25 per cent. increase, on the ground that the landlord was not wholly responsible for the repairs of the premises, whereupon the landlords applied to the county court to determine (1) whether the notice of increase (referred to above) was valid, and (2) whether the landlords were responsible for the whole of the repairs, the determination of this latter question depending to some extent on a construction of the terms of the tenancy agreement. The county court judge found in favour of the landlords on both the above questions. The tenants thereupon appealing, a preliminary objection was taken by the landlords at the hearing of the appeal before the Divisional Court, on the ground that, by virtue of s. 2 (6) of the Rent Act, 1920, the decision of the county court judge was final and conclusive and was not subject, therefore, to appeal.

The crux of the whole question appears to have been whether the above matters which the county court judge had been called upon to determine were to be regarded as "questions arising under sub-ss. (1), (2) and (3) of s. 2 of the Rent Act, 1920." Sub-section (1), it will be noted, deals with the permitted increases of rent, sub-s. (2) with the suspension of such increases on the grounds therein mentioned, and sub-s. (3), with transfer to a tenant of a burden or liability previously borne by the landlord.

The question in *Elvington Tenants Ltd.* v. *Hatton*, therefore, if it fell within any of these sub-sections, was to be regarded as falling within sub-s. (1), as the real question was whether the 25 per cent. increase was a valid increase that could be lawfully claimed.

This was the view taken by the Divisional Court, who were of opinion that the question was, in substance, one arising under sub-s. (1) of s. 2, though the question was put in a different form before the county court judge, the judge being asked to determine (1) whether the notice of increase was valid, and (2) whether the landlords were responsible for the whole of the repairs.

The view taken by the Divisional Court in this case appears to be entirely in accordance with the *dicta* of Bankes, L.J., in *Strickland* v. *Palmer*, 1924, 2 K.B.D., at p. 580. In *Strickland* v. *Palmer* the procedure adopted for determining the point at issue was entirely different from the procedure adopted in *Elvington Tenants Ltd.* v. *Hatton*. In the former case, an action had been brought to recover arrears of rent which involved the question of the right of the landlord to certain increases of rent under s. 2 (1) (*b*). The Court of Appeal, affirming the Divisional Court, held that the decision of the county court judge was subject to appeal, and that s. 2 (6) of the Rent Act, 1920, had no application in the circumstances, since the question arose incidentally in the course of an ordinary common law action to recover rent. The Court of Appeal, however, pointed out that their decision would probably have been otherwise had the same question arisen in a special application made to the court for the purpose, under s. 2 (6). Thus (at p. 580), Bankes, L.J., said: "if the question now raised had come before the county court by way of an application under that sub-section, it may be that no appeal would lie." These *dicta* of the learned Lord Justice may now be regarded as having been authoritatively confirmed and directly applied in *Elvington Tenants Ltd.* v. *Hatton*.

The result, therefore, is that an entirely different result will ensue, according to the particular procedure adopted for the determination of questions arising under s. 2 (1), (2) and (3) of the Rent Act, 1920.

Mr. E. J. Mott, who has been Clerk to the Fulham Board of Guardians for nearly thirty years, has decided to retire on account of ill-health.

Our County Court Letter.

DECLARATORY ACTIONS.

It remains to be seen whether the latest decision will end the long conflict of judicial opinion with regard to the above. The Court of Appeal have upheld the judgment of the county court in *De Vries* v. *Smallridge*, 1928, W.N. 12. The facts were as follows: An agreement was entered into for the sale of real property at the price of £750. The deposit of £100 was paid to the stakeholders under the agreement. Completion did not take place, and the vendor claimed that under the agreement the deposit was forfeited. He did not sue the stakeholders, but issued a plaint against the purchaser in which he claimed—not the £100 or any sum of money—but the two following declarations: (1) that the defendant had forfeited his deposit; (2) that the stakeholders should hand over the deposit to the plaintiff. The county court judge held that he had no jurisdiction to make a declaration by itself, and as no sum was claimed, he dismissed the action. The Divisional Court which heard the appeal, consisted of Lords Justices Bankes and Lawrence, sitting as additional judges of the King's Bench Division. In that capacity their lordships felt bound by the state of the authorities, and they therefore reversed the decision of the county court judge, and remitted the action to him for trial. At the same time, however, under the Supreme Court of Judicature (Consolidation) Act, 1925, s. 31 (1) (*f*), the Divisional Court gave special leave to appeal to the Court of Appeal—apparently differing from the attitude of a similar Divisional Court, who saw no reason for granting leave to appeal from two lords justices to three. The Court of Appeal (Lords Justices Scrutton and Atkin and Mr. Justice Eve), in restoring the judgment of the county court, took the opportunity of overruling *Stiles* v. *Ecclestone*, 1903, 51 W.R. 411. The county court judge had there granted an injunction restraining the defendant from carrying on business as a dressmaker within ten miles of Mildenhall, Suffolk, which she had agreed not to do under a penalty of £40. The Divisional Court (Lord Alverstone, C.J., and Wills and Channell, JJ.) had upheld the judgment on the ground that if damages had been claimed the case would have been within the county court jurisdiction—at that date, £50.

A case which has now been followed is *Rex* v. *Cheshire County Court Judge and United Society of Boilermakers, ex parte Malone*, 1921, 65 Sol. J. 552. Originally Malone had sued in the Cheshire County Court, at Birkenhead, for the following: (1) a declaration that a resolution of the defendant union, purporting to expel the plaintiff, was *ultra vires* and void; (2) an injunction to restrain the union from acting on the resolution. The county court judge held that he had no jurisdiction, as there was no claim for damages, and, moreover, in such an action no damages were recoverable. The method of appeal chosen was by means of a rule *nisi* for a mandamus, calling upon the learned judge to show cause why he should not hear and determine the action. The Divisional Court (Lord Reading, C.J., and Darling and Avory, JJ.) held that as there was evidence that the applicant's loss of earnings amounted to £88, the county court had power (1) to admit an alternative claim for that sum; and, therefore, (2) to try the main issues as to declaration and injunction. The Court of Appeal (Lord Sterndale, M.R., Scrutton, L.J., and Lord Wrenbury—then Younger, L.J.) held that under the County Courts Act, 1888, s. 56, it is essential that there should be a money claim not exceeding £100, and if no such claim is made and established, the court cannot grant ancillary relief by way of declaration and injunction. In Malone's case the damages claimed were for expulsion of a member from his union, which neither the county court nor any other court can award—by reason of the Trade Union Act, 1871, s. 4. The judgment in the county court was therefore upheld.

Another case of a widely different nature, which has also now been followed, is *Simpson* v. *Crowle and others*, 1921, 3 K.B. 243. The plaintiff was a member, and the defendants were the committee, of a Hound Trailing Association. The plaintiff was expelled by reason of irregularities relating to a hound which ran out an easy winner after having been backed at ridiculous odds. The plaintiff claimed an injunction restraining any interference with his privileges of membership. The county court judge, at Whitehaven, tried the case on its merits and dismissed the action. The plaintiff's appeal came into the ordinary Civil Paper, and, for the first time, the defendants then took the point that the county court had no jurisdiction, as there was no claim for debt or damages. The Divisional Court (Bray and Lush, JJ.) upheld this view, and laid down that, even though the parties consent, a county court judge should strike out such an action.

Practice Notes.

INCOME TAX.

An important point which is often lost sight of is that s. 133 (2) of the Income Tax Act, 1918, provides that the determination of commissioners on appeal shall be final and that neither the determination of the commissioners, nor the assessment made on appeal, shall be altered except by order of the court when a case has been required as provided by the Act. In actual practice, especially when the authorities have investigated a case over a number of years, additional assessments are sometimes made for years in which appeals have been determined by the commissioners. When dealing with cases where additional assessments cover a number of back years practitioners should ascertain from the clerk to the commissioners whether or not any of the years have been the subject of an appeal by the taxpayer or of an objection by the inspector.

In computing the assessable profits of a firm the question of interest has to be considered and the authorities raise no objection to the allowance of earned income relief on the amount of interest on capital paid to the partners. Interest on loans to the business by the partners, however, is not so treated.

In Northern Ireland statutory relief is granted to owners of property when rent has been irrecoverably lost, but in Great Britain there is no such relief under Sched. A, although, in practice, the authorities grant it as a concession. The computation of this concessional allowance from the Sched. A assessment takes the following form: Assuming that premises are let at £200 per annum and the Sched. A assessment is £200 gross and £163 10s. net the tax chargeable for the current year will be £32 14s. If the tenant of the premises absconds leaving one-half of the year's rent unpaid relief will be due in the sum of £20, being tax at the rate of 4s. on £100. The allowance is granted (*a*) if the tenant absconds, becomes bankrupt or insolvent; (*b*) if he fraudulently assigns or removes his goods; or (*c*) if the premises are left unoccupied. It sometimes happens that the rent payable is more than the amount of the gross Sched. A assessment and in these cases the officials make a deduction from the amount of the lost rent in the same proportion as the repairs allowance bears to the gross Sched. A assessment.

THE CENTRAL DISCHARGED PRISONERS' AID SOCIETY.

The Treasurer of the Middle Temple, Lord Reading, and the Benchers of the Inn have generously granted the use of the historic hall of the Middle Temple for a public meeting to be held at a later date on behalf of The Central Discharged Prisoners' Aid Society, Victory House, Leicester Square.

The attention of the Legal Profession is called to the fact that THE PHŒNIX ASSURANCE COMPANY LTD., Phœnix House, King William Street, London, E.C.4 (transacting ALL CLASSES OF INSURANCE BUSINESS), invites proposals for Fidelity Guarantee and Court Bonds, Loans on Reversions and Life Interests. Branch Offices at Byron House, 7, St. James's Street, S.W.1; 187, Fleet Street, E.C.4; 20-22 Lincoln's Inn Fields, W.C.2; and throughout the country.

POINTS IN PRACTICE.

Questions from Registered Annual Subscribers are invited and will be answered by some of the most eminent authorities of the day. All questions should be addressed to—The Assistant Editor, "The Solicitors' Journal," 29, Breams Buildings, E.C.4, be typewritten on one side of paper only, and be in duplicate. Each copy to contain the name and address of the subscriber. To meet the conveniences of Subscribers, in matters requiring urgent attention, answers will be forwarded by post if a stamped addressed envelope is enclosed.

Perpetuities—Settlement—Class Ascertainable on Child attaining Twenty-five Years of Age—L.P.A., 1925, ss. 163, 164.

Q. 1214. A desires to settle certain funds for the benefit of his three children in such shares as he or his wife shall, before the youngest child attains twenty-five, appoint by deed or will; and, failing appointment, among such of the children equally as shall be living when the youngest attain twenty-five, the income meantime, to be applied at the discretion of the trustees for the maintenance of all or any of the children and any surplus to be accumulated. (1) Under the L.P.A., 1925, and s. 164, must the age of twenty-five be reduced to twenty-one to be effective? (2) Can the accumulation of the whole unexpended surplus income continue (subject to any appointment) until the youngest attains twenty-one?

A. (1) The appointment under the power must conform to the law of perpetuities, and the limitation as to the time of making it tends rather to accelerate than to postpone vesting. The vesting provision in default of appointment, however, violates that law, with the result that the age for vesting is automatically reduced to twenty-one under the L.P.A., 1925, s. 163 (1) and (2). (2) The accumulation can continue during any of the periods mentioned in s. 164, and the opinion is here given that a direction to accumulate for the alternative which proved to be longest in duration would be effective. But the period mentioned is plainly within either (*b*) or (*c*).

Sole Executrix and Beneficiary.

Q. 1215. A by his will devised all his real estate to his wife and appointed her sole executrix. The widow is now selling certain of the real estate, and it is desired to know whether it is necessary for her to execute an assent as personal representative to herself as devisee?

A. For a discussion of the position when any person is sole trustee for himself as sole beneficiary, see answer to *Q.* 244, p. 541, vol. 71. In the case above the widow can sell the property as executrix under the A.E.A., 1925, s. 36 (6), on recital of non-assent, or assent to herself under the A.E.A., 1925, s. 36 (1) and (4), and the L.P.A., 1925, s. 72 (3), and deal with it as absolute owner.

Carriage of Persons—Omnibus—Passenger alighting while in motion—Injury—Negligence—Contributory Negligence—Responsibility.

Q. 1216. A is the owner of a small 'bus plying for hire between two towns. The entrance to the 'bus is at the front and the entrance door is controlled by A, who is also the driver. There is no conductor. A passenger (B), who has paid the usual fare, occupies part of the driver's seat, and on arriving at a certain house wishes to alight. The 'bus is carrying a full load of passengers, some of whom are standing in the small space just inside the entrance door. Before the 'bus stops the door is opened by one of the standing passengers and B gets out. She stumbles and is dragged along by the 'bus, one of the wheels of which passes over her leg causing grave injuries. The driver was fully aware that B was getting out, yet made no attempt to stop her doing so. Is the driver and owner of the 'bus liable in damages to B, or has B been guilty of such contributory negligence as to absolve the driver from blame? On behalf of B, it is contended that, even assuming B was guilty of contributory negligence, it is not of such a nature as to absolve the driver, seeing that in the circumstances he failed to exercise proper control over the 'bus in allowing someone else to open the door before the 'bus had stopped, and also in not preventing B from getting out before the 'bus had stopped. Authorities would be welcomed.

A. Primâ facie, a person who voluntarily alights from a public vehicle before it has stopped and is injured has himself or herself only to blame, see *Biard* v. *South London Tramways Co.*, 1886, 2 T.L.R. 56 (over-ruled *Hall* v. *London Tramways Co., Ltd.*, 1896, 12 T.L.R. 611, but on the point of evidence of negligence of the company only). See also *Machen* v. *L. & Y. Rly.*, 1918, 88 L.J., K.B. 371. To succeed B would at least have to prove that the driver was physically able to prevent the other passenger opening the door and B alighting while the vehicle was in motion and he was driving it. Having regard to the usually contradictory evidence, this class of case offers difficulties in the way of a decisive opinion, but, for what it is worth, on the facts above, that here given is that B's chances of success hardly warrant the expenses of action, even if A is in a position to pay substantial damages.

Land Tax—Assessment—Appeal.

Q. 1217. In an appeal against an assessment to land tax it appears that the assessors have not made their rate upon the basis of the Sched. A, or of any other existing valuation, but have themselves in each case viewed the whole of the properties in the parish which are brought into the rate, and then determined the annual value in respect of the several properties and assessed them to land tax upon these valuations. None of the property assessed consists of tithe rents and the net quota for the parish in question does not involve the land tax being levied at a rate higher than 1s. in the £ or less than a penny in the £, the actual rate being 6d. in the £. No allowance in arriving at the sum upon which the tax is to be calculated has been made by the assessors for land tax, tithe, sums expended for repair of certain sea walls and poor and sanitary rates (now general rate). The appellant contends that he is entitled to have these annual charges deducted from the gross annual value fixed by the assessors, and that the tax should be then assessed on the balance or net annual value. The commissioners however hold that the only allowance that can be made from the annual value as assessed by the assessors are in respect of land tax and tithe in the circumstances. Will you please let us have your opinion as to what, if any, deductions can be properly claimed, should be made from the annual value as assessed by the assessors in arriving at the annual value for the purposes of assessment. Please give references to any cases or statutes which will bear upon the matter. When the commissioners of land tax are satisfied upon hearing an appeal that the appellant's property has been assessed in an amount in excess of the equal pound rate by the assessors, what exactly is the course the commissioners have to adopt under s. 84 of 38 Geo. 3, c. 5. It seems clear that once the rate is allowed they have no power to direct a fresh assessment to be made for the whole parish or tithing, but must lessen the actual assessment appealed against by so much as it exceeds the equal pound rate, and ought to be charged, and cause the money so abated to be re-assessed, surcharged, and levied in such manner as the commissioners shall think most equal. What in actual practice does this entitle them to do. Can the assessors raise the sum by which the annual value is abated by raising the respective annual values of the whole of the other properties comprised in the rate, or should they simply add a proportion of the sum abated from the annual value of the property in respect of which the appeal is made to the annual values of the other properties comprised in the rate, or should

the commissioners direct the assessors to add to the tax payable by each of the owners of the other properties comprised in the rate a part of the sum by which the actual tax payable by the appellant, before his appeal, has by reason of the appeal being successful been abated. There are no properties in the rate which are under or insufficiently charged, and none in the parish which have been omitted from the rate, neither does the rate show an excess on the gross quota equal to or greater than the reduction to which the appellant has been found entitled.

A. It appears from *R.* v. *Land Tax Commissioners for the Tower Division*, 1853, 2 E. & B. 694, quoted in *East Riding L.T. Commissioners* v. *Londesborough*, 1917, 1 K.B. 531, that the quota assessed on each parish under the Land Tax Redemption Act, 1802, s. 180, is unchangeable. Therefore, any grievance against the commissioners would be an assessment which unfairly distributed that quota between the landowners who had to bear it, i.e., a wrong basis of assessment, which nevertheless worked out in the right proportions would not be such a grievance. There is no appeal from the Commissioners, but it has been held that they are not doing their duty in adhering to an out of date valuation, after changes in the value of the property: see *R.* v. *Commissioners of Land Tax*, 1851, 16 Q.B. 381, and that they must make the assessment on the net and not the gross annual value: see *R.* v. *Land Tax Commissioners*, 1894, 58 J.P. 446. The opinion is here given that the annual value within s. 180 of the Act of 1802, *supra*, means the net annual value, but if the various impositions mentioned in the question are fairly charged on all lands in the parish according to annual value, the question whether they are deducted or not for the purposes of the tax should not be important, for the proportion of burden on each parcel should be the same. Appeals to the Commissioners are regulated by s. 8 of the Act of 1797, and the machinery is framed to ensure that the appeals shall be heard before the tax is collected. There does not appear to be any authority on s. 84 of the Act of 1797, but it seems clear from the section and from the permanency of the quota that if one assessment in a parish is reduced others have to be raised. The result of the various methods suggested ought approximately to be equal. The assessment of s. 84 appears to be a fresh assessment, to be added to that originally made, and it would seem that landowners aggrieved by it would have to wait until the next year before adjustment.

Debenture—Notice to Pay Off.

Q. 1218. What notice must, in the absence of an express condition, be given to a limited company to pay off debentures the principal of and interest on which fell due on the usual half-yearly dates, the first of which has passed? Is s. 103 of L.P.A., 1925 in point?

A. A debenture is embraced by the definition of a mortgage in L.P.A., 1925, s. 205 (xvi). A mortgagor is not entitled by s. 103 (1) of L.P.A., 1925, to three months' notice to pay off; this sub-section merely renders the service of three months' notice one of the conditions precedent of the exercise of the statutory power of sale, which is a remedy inapplicable to a debenture. As the principal is due (and even if the interest is not in arrear) the debenture-holders should demand immediate repayment and in default pursue their usual remedies.

Pre-1926 Bare Trustee for a Lunatic—Sale of Land—Title.

Q. 1219. A, in 1915, purchased a number of properties and in each case the conveyance or assignment was taken in the name of B, who executed a declaration of trust in favour of A. A is now *non compos mentis*, and it is desired to sell the properties without the assistance of the court, if possible, and shall be glad to have your opinion on the following points:—

(*a*) Can B appoint another, a trustee jointly with himself, to act as trustees under the declaration of trust?

(*b*) If such appointment is made, will the trustees hold upon the statutory trusts; alternatively,

(*c*) Did the property under and by virtue of the L.P.A., 1925, become vested in A, as B appears only to have been a bare trustee?

(*d*) If such is the case, what course is recommended to facilitate the sale of the properties?

A. On 31st December, 1925, B was bare trustee for A, and therefore the legal estate vested in A on 1st January, 1926, under the L.P.A., 1925, 1st Sched., Pt. II, paras. 3 and 6 (*d*), the saving in para. 7 (*g*) as to vesting land in an infant having no counterpart in the case of a lunatic. If B suppresses the declarations of trust he can sell and give good title under the amendment to para. 3 in the L.P. (Am.) A., 1926, and in such case he will be a "trustee *de son tort*" of the purchase moneys in favour of A. This is an onerous position, and, unless the value of the land to be sold is very small, B will be best advised to take proper proceedings to have himself or someone else appointed committee of the estate or to obtain a proper order for sale under the Lunacy Act, 1890, s. 117, or otherwise. In answer to the questions: (1) No, B has been divested of his legal estate, as above. (2) No. (3) Yes. (4) As above.

Presumption of Death.

Q. 1220. A purchased in 1906 from B the reversionary interest in personal property to which B will be entitled contingently upon his being alive at the death of C. In connexion with his purchase, A has effected and now holds a policy of assurance payable on the death of B. B has not been heard of since 1920, when he was in America. There are no proceedings pending in regard to the will under which the reversion arises and C is still living. Can A at this stage apply to the court to presume the death of B, and if so in what way should the application be brought before the court, or must A wait until the death of C before any application can be made?

A. There is no foundation for an application by A to presume B's death in the Probate Court at any stage. That court will only presume the death of a person whose estate is to be administered. Further A could not be benefited in the circumstances even by an application by B's personal representative. The Probate Court does not fix a definite date of death, but comes to a finding that sufficient evidence has been laid before it to just fy its granting to the applicant leave to swear the death on or since the last date on which the presumed deceased is known to have been alive, and such a finding does not dispense with the necessity of proving the fact of death in any other court, and would be of no assistance to A to determine whether B had pre-deceased C. Procedure by way of originating summons in the Chancery Division, it is submitted, would only be competent after the death of C when there would be a fund to be administered, cf. *In re Aldersley*, 1905, 2 Ch. 181. A's best course would seem to be to demand payment from the insurance company relying on the common law presumption of death which may arise after a person has not been heard of for seven years, to be enforced by action on the lines of *Prudential Assurance Co.* v. *Edmonds*, 2 App. Cas, 487. See "Benyon's Life Insurance," 1914 ed., p. 417. "There must have been search and inquiry made amongst those who, if the man were alive, would be likely to hear of him. If it is certain that none of these have seen or heard of him, the presumption arises—but if there is any doubt in the matter, it becomes a question of fact to be decided by a jury."

Mr. Louis Thompson Rowe, of Hammersmith-terrace, W.6, and Pardlestone Cottage, Kilve, Somerset, and of Messrs. Burch & Co., solicitors, 6, Bolton-street, Piccadilly, died on 22nd October, 1927, aged seventy-one, leaving £12,913. The testator left to the Oxford and Cambridge Musical Club, 6, Bedford-square, W.C., his copy of collected editions of Schubert's works in score; and to Walter Rugeley Maitland Lamb a red crayon drawing by Augustus John.

Correspondence.

Personal Representatives as Settled Land Act Trustees.

Sir,—I have read with some misgivings the decision in "*Re Catchpool*," reported in the current issue of THE SOLICITORS' JOURNAL, and your observations thereon in "A Conveyancer's Diary." I am uneasy because the case, and more especially your comments, seem to me to imply, if they do not establish, that s. 30 (3) of the Settled Land Act, 1925, applies only to settlements arising on deaths after 1925. At 1st January, 1926, there existed many simple testamentary settlements of realty on A for life, with remainder over, in fee simple, B being the executor of the settlor's will which contained no express appointment of Settled Land Act trustees. In such cases it seems to have been tacitly assumed, at any rate by many practitioners, that B became, by virtue of the sub-section referred to, the trustee of the settlement, subject to the obligation of appointing an additional trustee to act with him for the purposes of the Act. This obligation was duly carried out by B appointing C, and B and C then executed a vesting deed in favour of A, who subsequently sold the settled land as estate owner, B and C concurring to acknowledge receipt of the purchase money. The justification for assuming that the sub-section applied to settlements arising on pre-1926 deaths, would appear to be contained in s. 1 of the Act, where the definition of a settlement is made to extend to deeds and wills, whether made before or after, or partly before and partly after, the commencement of the Act.

If I am right in thinking that *Re Catchpool* has such a bearing on s. 30 (3) as indicated above (and I devoutly hope I am wrong), the titles of purchasers under all such transactions as that above outlined become seriously open to question, and it would appear that the only way of remedying the matter would be for the transaction to be carried through anew after an effective appointment of Settled Land Act trustees had been made. Of course, in a great number of settlements of this kind B is given power of sale and conversion at the death of A, and this would have created him a trustee for the purposes of the old Settled Land Acts as well as the new, and would apparently render any reliance on s. 30 (3) in such cases superfluous.

Deal, HERBERT S. BROWN.
2nd April.

[We entirely agree with the following note contained in 2 Wolst. & Cherry at p. 119:—"This sub-s. [i.e. sub-s. (3) of S.L.A., 1925, s. 30] . . . applies to settlements created by will or arising on intestacy, whether the death was before or after 1st January, 1926, and is thus retrospective." See also S.L.A., 1925, s. 119 (1) (*a*). *Re Catchpool* only deals with the meaning of "trustees of the settlement" in L.P.A., 1925, 1st Sched., Pt IV, para. 1 (3). There seems to be no justification for apprehending that S.L.A., 1925, s. 30 (3) does not apply to pre-1926 settlements.—ED., *Sol. J.*]

Reviews.

International Private Law in Scotland in the Sixteenth and Seventeenth Centuries. Visser Prize Essay in the University of Leiden, 1927. By ANDREW DEWAR GIBB, LL.B., Advocate, and of Gray's Inn, Barrister-at-Law. Edinburgh: W. Green & Son, Ltd. 1928. 8vo. pp. 43. 4s. 6d. net.

The University of Leiden, at which, since its foundation, law has always occupied a prominent place in the curriculum of studies, offered, in 1924, prizes to graduates of European Universities for essays on the International Private Law of any European country in the sixteenth and seventeenth centuries, and it was in response to that invitation that this brochure was presented in French by the learned author, and was awarded a prize. It well deserved the additional publicity now given to it in an English translation. Although brief, it is a well-arranged survey of Scotland's continental relations out of which originated the tentative efforts of the Scottish courts to grapple with the emerging legal problems. Estranged from England, Scotland had close associations with France and Holland, and this circumstance, with the study by Scots lawyers of the civil law and its exponents in those countries, broadened the Scottish outlook on questions of international law, and no doubt accounts for the following complacent observation by Lord Kames, the extremely metaphysical Scottish judge, in his "Principles of Equity": "Lucky it is for Scotland that chance perhaps more than good policy had appropriated foreign matters to the Court of Session where they can be decided on rational principles, without being absurdly fettered as in England by common law." During the period in question the cases involving questions of international private law were not numerous, but they are interesting as showing the development of the subject. These have been collected with great industry by Mr. Gibb, whose comments, always valuable, have occasionally a piquancy when, as a perfervid Scotsman, he indulges in an occasional good-humoured gibe at the pretentions of the English courts and their contempt for procedure different from their own. The brochure is a real contribution to the history of an interesting section of Scots law.

Books Received.

Cain or the Future of Crime. GEORGE GODWIN. Foolscap 8vo. 108 pp. (with Appendix). 1928. London: Kegan Paul, Trench, Trubner & Co., Ltd. New York: E. P. Dutton and Co. 2s. 6d. net.

Kime's International Law Directory and Telegraphic Code for 1928. Established by PHILIP GRABURN KIME. Edited and Compiled by PHILIP W. T. KIME. 36th year. 1928. Crown 8vo. pp. xiii and 595. London: Butterworth & Co., Bell-yard; Kime's International Law Directory, 88/90, Chancery-lane, W.C.2.

Minnesota Law Review. Journal of the State Bar Association. Vol. 12. No. 4. March, 1928. The Faculty and Students of the Law School of the University of Minnesota. 60 cents per current number.

The Secretary and his Directors. HERBERT W. JORDAN, Company Registration Agent, and STANLEY BORRIE, Solicitor. Eighth Edition. 1928. pp. xxxi and 130 (with Index). Large crown 8vo. Jordan & Sons, Ltd., Chancery-lane. 2s. 6d. net.

Tax Cases. Vol. XI. Part IX. Reported under the Directions of the Board of Inland Revenue. pp. iv and 657 to 748.

COMMITTEE ON LEAD TETRA-ETHYL.

The terms of reference to the Committee which was announced in the House of Lords on Thursday, 29th ult., are:—

"To inquire into the possible dangers to health resulting from the use of motor spirit containing lead tetra-ethyl or similar lead-containing compounds, and to report what precautions, if any, are desirable for the protection of the public or of individuals in connection with the use or handling of such motor spirit."

The Minister of Health has appointed Mr. S. F. S. Hearder to be Secretary, and any communications should be addressed to him at the Ministry of Health, Whitehall.

VALUATIONS FOR INSURANCE.—It is very essential that all Policy Holders should have a detailed valuation of their effects. Property is generally very inadequately insured, and in case of loss insurers suffer accordingly. **DEBENHAM STORR & SONS (LIMITED)**, 26, King Street, Covent Garden, W.C.2, the well-known chattel valuers and auctioneers (established over 100 years), have a staff of expert valuers, and will be glad to advise those desiring valuations for any purpose. Jewels, plate, furs furniture, works of art, bric-a-brac a speciality.

NOTES OF CASES.

High Court—Chancery Division.

Re **Keystone Knitting Mills' Trade Mark.**

Clauson, J. 1st and 2nd March.

TRADE MARK—REGISTRATION—VALIDITY AFTER SEVEN YEARS—MOTION TO RECTIFY REGISTER—DELAY DUE TO COURT PROCEDURE—JUDGMENT ANTE-DATED—ORD. XLI, R. 3.

The applicant company, dealers in clothing, moved to rectify the register of trade marks by removing therefrom the respondents' trade mark, consisting in the word "Charm," registered in connexion with hosiery. The company had applied in April, 1926, to register the word "Isocharm" in Class 38, in connexion with hosiery of their own, and had been refused registration save with the respondents' consent. The respondents would not consent: and this motion came before the court on 1st March. On 15th July, 1927, the applicant company had served on the respondents notice of motion for 22nd July, seven days later. But, as the motion was not tried until a date after the respondents' trade mark had completed a period of seven years on the register, the objection was taken on behalf of the respondents that the register could not be rectified by removing the mark.

CLAUSON, J., said that this objection failed. The delay on which it was based was no fault of any of the parties: it was caused by court procedure; and the court could avail itself of a common law power, which it had under Ord. XLI, r. 3, and ante-date its judgment. The respondents' mark had direct reference to the character of the goods in connexion with which it had been registered, and the applicant company's motion succeeded. The order would be ante-dated to 15th December, 1927, but the Comptroller of Trade Marks was to have an opportunity to intervene before the order was drawn up.

COUNSEL: *Sir Duncan Kerly*, K.C., and *F. E. Bray*, for the applicant company; *Moritz*, K.C., and *H. Fletcher Moulton*, for the respondents.

SOLICITORS: *McKenna & Co; Emmanuel & Simmonds.*

[Reported by K. R. A. HART, Esq., Barrister-at-Law.]

High Court—King's Bench Division

Lowe *v.* **Bentley.** Mackinnon, J. 13th March.

COUNTER-CLAIM—TO BE DELIVERED WITHIN SIX YEARS FROM DATE OF CAUSE OF ACTION—STATUTE OF LIMITATIONS, 21 Jac. 1, c. 16.

A writ was issued by the plaintiff on the 23rd December, 1926, claiming from the defendant, *inter alia*, £60, the amount of a cheque drawn by the plaintiff on the 24th December, 1920, and paid to the defendant in settlement of horse-racing bets. On the 4th July, 1927, the statement of claim was delivered. The defendant in his defence, set-off and counter-claim, delivered on the 19th October, 1927, while denying the plaintiff's right to recover the £60, said that he had paid to the plaintiff cheques for £65 and £67 10s. on the 28th December, 1920, and the 17th January, 1921, respectively for racing bets; he set off the £60 claimed, and counter-claimed for £72 10s. The plaintiff pleaded the Statute of Limitations, 21 Jac. 1, c. 16.

MACKINNON, J., referred to the material dates, and said that the counter-claim was delivered on the 19th October, 1927, more than six years after the defendant's right accrued under the Act of William IV. Was the six years from the date of the subject matter of the counter-claim to be taken to the date of the issue of the writ or to the date when the counter-claim was delivered? After reviewing the authorities, his lordship held that a counter-claim was only good if the cause of action arose less than six years before the delivery of the counter-claim. The counter-claim in the present case was, therefore, barred. Judgment for defendant on the claim, with costs, and for the plaintiff on the counter-claim, with costs.

COUNSEL: *Claude Grundy*, for the plaintiff; *J. P. Valetta*, for the defendant.

SOLICITORS: *Sydney A. Musson; Edmond O'Connor & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Symington & Co. *v.* **Union Insurance Society of Canton, Ltd.**

Roche, J. 15th March.

INSURANCE—CONDITIONS OF POLICY—MARGINAL CLAUSE—OF NON-EFFECT—NOT IN SLIP REPRESENTING REAL CONTRACT—INSURERS' LIABILITY.

Appeal from the award of an arbitrator.

The claimants, cork growers, of Spain, under a policy of the 1st January, 1920, insured for £20,000, with the appellants and other companies, a quantity of cork at and from any port or ports, place or places, between Bordeaux and Nice, both inclusive, to the United Kingdom. On the 9th February, 1920, an accumulation of cork, awaiting shipment on the jetty at Algeciras, was partly jettisoned, and partly damaged by sea water thrown on it, to prevent the spreading of a fire which broke out nearby. The claim for loss and damage was referred to arbitration. In the margin of the policy was inserted a clause to the effect that: . . . "any shore risk against fire granted herein shall not cover where the assured . . . has fire insurance which would attach if this policy had not been issued." The arbitrator, deciding in favour of the claimants, held that the policy should not be read as containing the above marginal clause, since it was not in the slip representing the real contract between the parties.

ROCHE, J., held that the arbitrator was right in treating the marginal clause as non-existent and not part of the real contract. Also, he could not support counsel's contention that the goods were not covered by the policy by reason of the time and place at which the loss and damage occurred. It was further said that the loss was due to a cause for which the insurers were not liable, namely, the action of the jetty authorities. The arbitrator had held that the loss might reasonably be attributed to fire, and he, his lordship, thought that that view was right. Award affirmed.

COUNSEL: *Le Quesne*, K.C., and *Simey*, for the appellants, the Insurance Co.; *Porter*, K.C., and *Somervell*, for the respondents, the claimants.

SOLICITORS: *Waltons & Co.; Parker, Garrett & Co.*

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Bonham *v.* **Maycock.** Roche, J. 16th March.

MORTGAGE—FARM—SOLICITOR ACTING FOR BOTH PARTIES—MONEY REPAID BY MORTGAGOR—NOT DELIVERED TO MORTGAGEE BY SOLICITOR — DEATH OF SOLICITOR — MORTGAGEE'S CLAIM AGAINST MORTGAGOR.

At the request of two of her uncles the defendant in this action raised a loan of £300 by mortgaging a farm belonging to them. The transaction was carried through by Harry Cecil Kilby, a solicitor, who also acted for the mortgagee, the plaintiff in the action. Before the mortgage was executed one of the defendant's uncles died, leaving his interest in the farm to her. The mortgage deed contained the usual covenant for repayment. The solicitor acting for both parties kept the deed and paid interest to the plaintiff, but after he died, in 1926, it was found that he had, in 1923, received the £300 from the defendant to be paid to the plaintiff, and had given a receipt for it. The plaintiff now claimed the £300 and interest from the defendant, who alleged payment to the plaintiff "by his solicitor or agent, Harry Kilby," on the ground that he had express or implied authority to receive the principal. Kilby had not in fact paid the money to the plaintiff or given up the mortgage deed to the defendant.

ROCHE, J., held that the holding out of the solicitor as entitled to receive interest was not a holding out as entitling

him to receive the principal. The real question was whether there was implied authority. He was satisfied that there was not. Kilby did not receive the money as agent for the plaintiff but as agent for the payor, not the payee. Judgment for the plaintiff for £300, with costs.

COUNSEL: *Ralph Thomas*, for the plaintiff; *W. G. Earengey*, for the defendant.

SOLICITORS: *Bristowes*, for *Fairfax & Barfield*, Banbury *James, Mellor & Coleman*, for *Phipps & Troup*, Northampton.

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Thomas and Another *v.* Jones and Others.

Lord Merrivale, P. 16th, 17th, 28th and 29th February, and 1st, 2nd, 6th and 19th March.

PROBATE—WILL—PROOF OF DUE EXECUTION—WANT OF KNOWLEDGE AND APPROVAL—LUCIDITY OF TESTATOR AT TIME OF DETERMINATION OF WHOLE CONTENTS EXCEPT RESIDUARY CLAUSE — GRANT OF PROBATE OMITTING RESIDUARY CLAUSE — COSTS IMPROPERLY INCURRED—PERSONAL LIABILITY OF EXECUTORS.

This probate action, the hearing of which occupied many days, raised, *inter alia*, important questions as to costs of executors. The plaintiffs, Henry John Thomas, a solicitor, and William Thomas Banbury, propounded, as executors, a will of the testator, John Llewelyn Jones, of the 5th May, 1927, and, alternatively, a will of the 2nd November, 1926. The defendants, being the widow and her two sons by a former marriage, put the plaintiffs to proof of due execution of the 1927 will and pleaded want of knowledge and approval of its contents and asked the court to pronounce for the 1926 will. The court found as facts that prior to the 29th April, 1927, the will of the 5th May, 1927, had "been determined upon as to all its contents except the residuary clause," but that from the 29th April, 1927, to the 31st May, 1927, when he died, the testator suffered from delusions, was incapable of concentration, and was "facile" and childish. That on the 5th May, the date of execution, the testator had not capacity to determine upon any testamentary disposition, but was able to remember his solicitor, the first plaintiff, and that he had been engaged in preparing his will, and to appreciate that he was being asked to execute as his will the document which was then put before him. His lordship thereupon, following the principle laid down in *Parker* v. *Felgate*, 1883, 8 P.D. 171, and approved in *Perera* v. *Perera*, 1901, A.C. 361, pronounced for the will of the 5th May, 1927, omitting the residuary clause and reserved the question of costs.

Lord MERRIVALE, P., in the course of a judgment as to costs, said: Although by the decision of *In the Estate of Plant*, C.A. 1926, P. 139, an executor who succeeds in an action in the Probate Division in establishing a will is *prima facie* entitled to have costs as between solicitor and client out of the testator's estate, yet the *prima facie* right that he has absolutely is "lost or curtailed by such inequitable conduct as may amount to a violation or culpable neglect of his duty," as was said of a trustee by Sir George Jessel, M.R., in *Turner* v. *Hancock*, 1882, 20 Ch.D. 303, and is subject to the limitation stated by Lindley, L.J., in *In re Beddoe; Downes* v. *Cottam*, 1893, 1 Ch. 547, that the costs and charges in question are "costs and charges not improperly incurred." . . . Under the circumstances I order the plaintiffs' costs to be taxed, and that one-fourth of that amount be borne by the plaintiffs personally; that three-fourths of the defendants' costs shall come out of the estate; and that one-fourth of the defendants' costs shall be paid by the plaintiffs personally . . . I make no distinction between the two plaintiffs as to costs. For though the plaintiff Banbury had not the skill or knowledge any more than he had the professional responsibility of the plaintiff Thomas, his co-executor, yet at an early period after the testator's death, with abundant means of knowledge of the doubts which existed, he made common cause with his co-plaintiff and for the conduct of the cause as a whole he must be held jointly responsible with his co-executor. His lordship referred to *In the Estate of Barlow*, 1919, P. 131.

COUNSEL: *Bayford*, K.C., *Clifford Mortimer* and *Richard Ellis* for the plaintiffs; *Willis*, K.C., and *R. M. Middleton* for the defendants.

SOLICITORS: *Kinch & Richardson*, for *Henry John Thomas*, Cardiff; *Wrentmore & Son*, for *Evan G. Davies*, Cardiff.

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

The Solicitors' Law Stationery Society, Ltd.: Annual Report.

The Thirty-ninth Annual General Meeting of the Society was held on Tuesday, the 3rd inst., at 104-107, Fetter Lane, E.C.4, Mr. Robert Chancellor Nesbitt in the chair. After the secretary had read the notice convening the meeting and the Auditors' Report, and the Directors' Report had been taken as read,

The CHAIRMAN, in moving the adoption of the report and the approval of the accounts, said: Taking the Directors' Report first, you will notice that both the sales and the profit are somewhat less than in 1926. That year, however, it must be remembered, was quite an exceptional year. The sales in that year increased considerably, the increase being largely due to new publications and forms issued in connexion with the alterations in conveyancing practice necessitated by the Law of Property Act, 1925. The decrease in sales last year, as compared with that exceptional year, only amounted to about £10,000 on a total turnover of £300,000, so that they were well in advance of those of any year prior to 1926. The profit last year is approximately £2,000 less than in 1926, but it is higher than in any year prior to that year.

Having regard to the above facts and to the fact that a reduction of £4,000 on account of the Society's contribution to staff pensions had been made before the profit was arrived at, the Directors consider the result satisfactory.

The shareholders may be inclined to ask why, with less profits, an increase in the dividend from 9 per cent. to 10 per cent. should be recommended. The answer is that the Directors, in fixing the dividend for 1926, took into account the fact that the year had been an exceptional one and might not recur, and further that they were negotiating at the time for the freehold premises, 29-31, Breams-buildings, which would necessarily entail a considerable expenditure of cash. There was also the uncertainty as to what effect upon the cash resources the payment of the contribution to the staff pension scheme would have. The Breams-buildings premises have been bought and paid for and our cash resources are higher now than they were this time last year. The Directors therefore feel justified in recommending a dividend of 10 per cent. and also recommend that £10,000 should be added to reserve account, bringing it up to £34,300, and they propose to carry forward just over £9,000.

You will notice that during the year the Directors have issued to customers and those who were willing to give the Society their support 1,760 shares at a premium of 10s. per share. The premium has, as usual, been added to the reserve account. I might add that as a result of the allotment of those shares we have secured 53 new shareholder customers.

With regard to the premises 29-31, Breams-buildings, mentioned above, they adjoin these premises and the Directors consider them a valuable acquisition. For some years now the accommodation in the Head Office has been inadequate and the purchase of this building has enabled us to give the Head Office staff better quarters and also to extend the Publishing Department, and give better offices to the staff of THE SOLICITORS' JOURNAL.

Turning to the accounts, there are not many figures that call for attention. On the assets side of the balance sheet you will see that the cash at bank and in hand is approximately £5,000 more than in December, 1926. The book debts are somewhat less. The addition to the freehold premises I have already referred to. That is all I think I need say with regard to the balance sheet.

With regard to the profit and loss account, working expenses at departments have increased by about £1,300. The increase in the expenses at Head Office is largely due to income tax, the tax paid last year being based on the profits of the year 1926 instead of on the three years' average as previously allowed.

You may remember that some years ago we purchased the freehold premises, 102-103 Fetter-lane, on the north side of the premises where we are now sitting, with a view to making provision for the expansion of the business. Owing, however, to the requirements of the Rent Restriction Acts, we were not able to get possession of the premises or to make use of the greater part of them, and we were obliged to take a lease of the premises, 94-97 Fetter-lane, to make room for additional plant. During last year, however, the premises 102-103, Fetter-lane, were found to be in a dangerous condition, and, having complied with the Dangerous Structures Notice, we are now in possession of the front portion of the site, and we are taking the necessary steps to demolish the old houses and erect a building to meet the requirements of the Society's growing business.

I really do not think that there is anything further to which I need call the attention of the shareholders so far as the report and accounts are concerned. I beg to move their adoption.

Mr. E. F. TURNER: I beg to second the resolution that the report and accounts be adopted.

The CHAIRMAN: If there are any questions that you wish to ask I will endeavour to answer them; if not, I propose to put the resolution to the meeting.

The resolution was carried unanimously.

On the motion of the CHAIRMAN, seconded by Mr. TURNER, it was unanimously resolved to declare a dividend at the rate of 10 per cent. per annum, less income tax, and to distribute bonuses among the customers and staff in accordance with the Articles.

The Directors retiring by rotation, Mr. R. C. Nesbitt and Mr. F. E. F. Barham, were re-elected on the motion of Mr. E. F. Turner, seconded by Sir Alfred Davies.

The Auditors, Messrs. Fuller, Wise, Fisher & Co., were re-elected at the same remuneration.

The ordinary general meeting then terminated, and was followed by an extraordinary meeting for the purpose of adopting new Articles of Association. The resolution for their adoption was carried unanimously as an extraordinary resolution, with a view to its confirmation as a special resolution at an extraordinary meeting to be held on the 24th April.

The meetings concluded with a vote of thanks to the Chairman and the Directors, and the Chairman, in expressing his thanks for the vote, paid a tribute to the debt which the shareholders and Directors owed to the management and staff.

Societies.

The Law Society.

FINAL EXAMINATION.

The following candidates (whose names are in alphabetical order) were successful at the Final Examination held on the 12th and 13th March 1928:—

Vivian Owen Adey, Thomas Alker, William Ferris Gerald Allardice, Alfred George Allcock, Charles Macfarlane Anderson, William Bains, Alfred Basterfield, Alfred Bate, Newton Beare, Percy Harold Berry, Leslie Joseph Biddle, LL.B. Birmingham, Alfred Bernard Blackhurst, Malcolm Dudley Borg, Henry David Bowdler, Vivian Knighton Brewer, Frank de Bock Brisley, William Thomas Broadbent, Stephen Brown, John Pierce Buchanan, B.A. Oxon., Ralph Raby Buckle, John Frederic Sydney Buckley, William Ernest Burgess, James Butterfield, Donald Malcolm Caldwell, Raymond Buxton Cole, Isadore Compton, Wilfred Edward Corney, B.A. Wales, Max Coton, Stuart Lindsay Coulson, Robert Basil Crust, Francisco Xavier D'Almada e Castro, Onslow Benjamin Danks, David Emlyn Davies, Francis Eric Dawes, M.A., LL.B., Mus.B. Cantab., Edward Roderick Dew, LL.B. Lond., Arthur Henry Dingle, Cyril George Edward Dingle, Arthur Guy Docker, Henry John Drury, George Gilhespy Dunn, Thomas Victor Edwards, William Epton, John Milthorp Fawcett, Alexander Fine, LL.B. London, George Frederick Folley, William Dunn Furniss, Leonard John Gibbons, B.A. Oxon., George Henry Gibson, Humphrey Joseph Godson, John William Grey, Henry John Hallam, Wilfrid Hamilton, Richard Claussen Hansen, Alfred Rees Harris, George Edwin Hartley, Henry Norman McClune Hazell, Frank Hellings, Sydney George Gordon Humphreys, Charles Bartleet James, Frederick William Jefferies, Arthur Dillwyn Ffoulkes Jones, Kenneth Jones, Sidney Philip Jones, William Trevor Jones, John Reginald Jourdain, David Pitt Kennedy, B.A., LL.B. Cantab., John Clark Kitchin, Clifford Knight, Frank Hingsum Kwok, Harry Ronald Lambert, Simon Bernard Levin, Francis Desmond Littlewood, Aubrey Keith Alwyn Loadsman, Don Jessel Macarthur, William Andrew Mackinlay, Thomas Frederick Maddocks, Robert David Mainwaring, Arthur Meaden Maslen, LL.B. London, Reginald Moore, Frank Lyons Moss, B.A. Oxon., Percy Nickson, M.A. Oxon., Denis Nixon, John Patrick Nolan, Harold Herbert Norris, Theodore John Norton, Neville Christopher O'Brien, William Charles Oliver, Leonard Owen, Charles John Parry, Herbert Perkin, Margretta Bulkeley Phillips, Philip Evan Phillips, John James Postlethwaite, Alfred John Pratt, Thomas Alfred Prickett, Basil Edmund Richmond, Robert Eric Robinson, Stanley Wilfred Rogers, William John Samuels, Thomas Doggett Savory, Harold Victor Scambler, Samuel Sebba, LL.B. London, Leonard Frank Shepherd, Louis Abraham Silman, LL.B. Leeds, Oswald Charles Henry Smails, Kenneth Frederick Solloway, Henry Stead, George Cuthbert Sedgwick Stuart, Charles Walter Sturton, Reginald George Frederick Tansley, M.A. Oxon., Joseph Lightfoot Taylor, John Robert Crampton Thatcher, B.Sc. London, Howard Lewis Thomas, Harry Thompson, Roger Edward Thompson, B.A. Oxon., Richard Francis Gardom Thurlow, John Frederick Toohig, Cyril John Edmonds Howard Tozer, B.A. Oxon., John Arnold Trevenen, Coldstream Tuckett, John Twinn, John Watson Vaughan, Robert Walsh, Leslie White, Edward Whiteside, William John Bickford Whiteway-Wilkinson, Henry William Wilks, William Henry Wilson, Alfred Michael Winser, Myer Wolff, Gerard Hugh de Burgh Wyllys, B.A. Oxon., John Herbert Allison Yearsley, B.A. Oxon.

No. of Candidates, 173. Passed, 132.

The Council of The Law Society have awarded the following prizes:—

To Richard Claussen Hansen, who served his articles of clerkship with Mr. John William Jackson, O.B.E., of Grimsby, the Sheffield Prize (founded by Arthur Wightman, Esq.), value about £35.

To Alfred Bate, who served his articles of clerkship with Mr. Joseph Henry Bate, of the firm of Messrs. Allington Hughes, Bate & Newman, of Wrexham, the John Mackrell Prize, value about £13.

INTERMEDIATE EXAMINATION.

The following candidates (whose names are in alphabetical order) were successful at the Intermediate Examination held on the 14th and 15th March, 1928. A candidate is not obliged to take both parts of the examination at the same time:—

FIRST CLASS.

Robert Crute, Thomas Tinmouth Houlsby, Lazarus Paisner, Bernard Passingham, Thomas Knightley Smith.

PASSED.

William Henry Almond, Patrick George Ashwin, M.A., Cantab., James Bailey, Eric Banks, Geoffrey Spencer Foster Barham, B.A., Cantab., Reginald Francis Beardow, Charles Robert Ingram Besley, Reginald Lawrence Bignell, George Charles Bird, John Norman Bishop, Henry Loveday Bosworth, Joan Edith Brewer, Reginald Henry Brooks, Henry Stephen Burr, William Guy Byford, B.A. Cantab., Ronald James Cassels, Herbert Castle, Noel Thomas Chetwood, Wilfred Harry Clark, Noel Clarke, Percy Daniel Clarke, Nathan Leslie Cohen, Malcolm Edward Cooper, John Arnold Corbin, John Leofric Robert Croft, Samuel William Dalton, Arthur Raymond Davies, Ithel Davies, B.A. Wales, John Deardon, Gilbert Edward Debenham, Anthony Henry Dell, Rupert Randolph Eldridge, Arnold Eliott, Horace Evans, Gerald Robert Finlow, Leslie Freeman, Morris Freeman, George Alexander Grove, Percival Walter Harman, Kenneth Robert Hartley, Brian Cedric Harward, George Augustine Hathway, B.A. London, Joseph Benjamin Hemming, Alfred John Hills, John Henry Hore, Antony Woods Hutton, John Frederick Jackson, Philip Suttill Jones, William Trevor Jones, Philip Robert Kimber, Walter John Knight, Arnold Wilson Lamb, Ernest Alfred Last, Humphrey Cecil Lavington, B.A. London, Horace Keats Lester, B.A. Cantab., George Alan MacDonald, Albert Marshall, Hedley Herbert Marshall, Maurice Oswald Marshall, B.A. Cantab., Richard Oscar Reeves Medlicott, Harold Charles Mellor, Harry Mew, Victor Frank Louis Millard, Christopher Mills, John Ivor Morgan, Edmund Geoffrey Mosely, Alan Edward Oliver, Robert Frederick Payne, Henry Ernest Pim, George Douglas Pool, Arthur Hosegood Pratt, Robert Arthur Proudfoot, Edward John Rendle, Joseph Francis Ritz Ritchie, Francis Charles Roberts, Philip Edward Rodway, Harry Percy Roe, Edward Thomson Scott, Henry Broadfield Sissmore, Terence Sloan, Charles Leslie Warren Smith, John Alan Spencer, Francis Edward Stafford, Alice Nancekivell Stevens, Richard Kelsey Stevens, John Owen Strong, George Temperley, Robert Tinker, Leonard George Vickers, Horace André Visick, Cyril Fletcher Walch, John William Welch, Stuart Whitehouse, Harold Wilks, Reginald Robert John Williams, Eric Willings, David Ian Wilson, B.A. Oxon.

The following candidates have passed the Legal Portion only: Herbert John Hampden Alpass, Archibald Bacon, Wesley William Bailey, John Harold Bally, John Bannister, Alec Barker, Francis Leslie Barlow, Eric Henry Beart, B.A. Cantab., Richard Sherwell Beattie, B.A. Cantab., Edith Elfrida Mary Bell, Harold Bennett, Michael Messer Bennetts, Geoffrey Shuttleworth Blakeborough, Bernard Blaser, Aubrey Boutwood, Geoffrey Burgess, Stephen Cleather Burnett, B.A. Oxon., Charles I'Anson Carr, Eric James Chapman, Frank Cheeld, Winfrid Kenneth Clarke, Dennis Robert Clarke, Leslie Cockayne, Gerald Gordon Collis, James Leslie Conway, John George Barnley Coulson, Gerald Frankcombe Court, Thomas Derek Ellis Davies, Henry Charles Abdy Davies, Jared Ewart Dixon, Frank Edward Tudor Edwards, John Wilfrid Edwards, Douglas John Firman, B.A. London, Alfred Leslie Freeman, William Frith, Andrew Gawen Goodman, Tom Corbett Goulding, Owen Greenfield, Roger Fairchild Greig, Henry Laurence Hagger, Alan Junius Gower Hardwicke, Charles Wyndham Harris, Samuel John Harvey, B.A. Oxon., Melville Southall Perry Hathway, Rowland Hugh Quartus Hayes, Donald Percival Heath, Richard Lancelot Lloyd Hemingway, Stanley James Herbert, Roy Stuart ffrench Hodges, Arthur Mawson Howe, Harold Capewell James, John James Jeffery, Albert Jones, David Harold Jones, Frederick Kellett, Austin Gerald Comyn King, Cho Yiu Kwan, Arthur Trevor Lloyd-Jones, B.A. Oxon., Bernard Vincent Lynskey, Frank Midgley, William David Morgan, Clarence William Nelson, Edward Robinson Nevin, Alan Croome Nichols, Harry Drake Popplewell, Edward Powell, Francis Spencer Protheroe, Basil Napier Ratcliff, Richard Reynolds Rathbone, Geoffrey Swinburne Raynes, Oliver Leslie Roberts, Arthur Robson, Maurice Rubin, Sydney Rutter, Robert Harcourt Scarr, Geoffrey Vivian Scott, B.A. Cantab., Patrick Ian Manson Sinton, William Ewen Stabb, M.A. Cantab., George Eric Stelfox, Edward Thomas Stirk, William Alan Taylor, David Leslie Roberts Thomas, Stephen Townsend, John Trethowan, Eric Lloyd Horsfall Turner, Ephraim Conrad Walmsley, Elizabeth Watt, M.A. Edinburgh, Christopher Frederick Henslowe Wigan, B.A. Oxon., George Edward Williams, James Hollyer Wilson, John Wood.

No. of Candidates, 318. Passed 193.

The following candidates have passed the Trust Accounts and Book-keeping portion only: Kenelm George Ridgard Bagshawe, B.A. Oxon., Alan George Bainton, Phillis Baker, B.A. London, Cyril Bedford, William Harttree Ball, Trevor Howard Bent, Alfred Bieber, LL.B. Liverpool, Lewis Frederick Biden, Lionel William Biggs, Joseph Edward Blow, Geoffrey Clarence Bonner, B.A. Cantab., Stanley Richardby Bousfield, B.A. Cantab., Frederick Arthur Bradley, Gabriel Ian Brandon, Thomas Marriott Broadie-Griffith, LL.B. London, Samuel Herbert Brookfield, LL.B. Liverpool, Alan Brown, Thomas Kennett Brown, Edward Lionel Bryan, George Michael Burges, B.A. Oxon., Henry Hugh Vyvyan Carter, B.A. Cantab., Gordon Worral Casey, LL.M., Sheffield, Ralph Nicholas Chard, Constance Aveline Chidell, Roger Chitty, B.A. Cantab., Horace Clark, Alun Devonald Cledwyn, Leon Coleman, LL.B. Liverpool, Alfred Allan Collins, LL.B. Leeds, Arthur Niel Combes, B.A. Cantab., Edward George Sherman Cook, George William Cook, Maurice Albert Coombes, Marshall William Coupe, Austell Carlyle Croasdell, Leslie George Downton Croft, B.A., LL.B. Cantab., Arthur Veale Darlington, LL.B. Liverpool, Joseph Eric Davis, LL.B. Manchester, Eric Dawes, B.A., LL.B. Cantab., Norman Dawson, James Pryce de Rees, John Spencer Dixon, Edward Dashwood Tyssen Drakes, Guy Minden Emerson, B.A. Oxon., Francis Penrhiw Evans, B.A., LL.B. Cantab., Hopkin Walter Evans, Edward Vincent Finnigan, Martius Redworth Wiles Fison, John Brett Fletcher, B.A. Oxon., Bernard Flinter, Geoffrey Freeborough, Reginald Freedman, M.A. Cantab., Harry Freeman, John William French, George Edward Graham Gadsden, B.A. Oxon., James Parsons Garner, Samuel Walker Garsed, B.A., B.C.L. Oxon., John Frederick George, William Shields Godfrey, Clarence Henry Goude, George Gregson, Eric Henry Hamburger, B.A. Cantab., Ernest Joseph Hazel, Stanley Head, Mark Wilson Hewitt, B.A. Oxon., Jack Hill, LL.B. Leeds, John Neville Hoare, LL.B. London, Frank Bockham Hodges, Reginald Hodgetts, Robert James Hogg, Reginald Frederick Price Holloway, B.A. Oxon., James Battersby Holt, Edgar Ewart William Hornbrook, Cecil Geraldine Price Hughes, John Gwynne Hughes, Reginald Addington Ingle, B.A. Cantab., Stanley Jennings, John Cyril Jeremiah, Frank Ralph Johnson, Thomas Llewellyn Jones, Gopala Krishnamurthy Kannepalli, Gregory Kulkes, B.A. Oxon., Frederic Alan Jubb, Cyril Edward Latter, Stephen Philip Levy, Cecil Jack Lewis, B.A., LL.B. Cantab., Frederick Stuart Lodder, Henry Maurice Loncaster, Desmond Gordon Notting Lowles. Francis Dudley Lys, Gordon Hugh McMurtrie. Mary Gordon Mathews, Henry Lyster Meyrick, Charles Howard Goulden Millis, M.A. Oxon., William Moncur Mitchell, B.A., LL.B. Cantab., John Gordon Moore, Geoffrey Norman Morice, B.A. Cantab., Leonard Robert Mullen, LL.B. Liverpool, Charles Mycock, Wilfrid Gower Nicholas, Doris Lucy Oates, Bryan O'Connor, Francis Joseph O'Dowd, LL.B. Liverpool, John Geoffrey Tilleard Pearson, Charles Phythian, Frederick William Pope, William Frederick Pope, Charles Antony Potter, Owen George Pratt, François Edward Mortimer Puxon, Isador Rapport, Gerald Rawlinson, Ernest Owen Reid, Dudley Richmond-Jones, Henry Frank Rousham Roberts, B.A. Birmingham, Walter Robinson, William Arnold Robinson, Reginald Robson, Gilbert Harry Rountree, Louis Christopher Rowe, Charles Henry Ryder, Arthur Crossley Sherwin, B.A., B.C.L. Oxon., Leonardo Judah Signaiewsky, LL.B. London, James Stockley Sinnott, John Fellowes Smeaton, Alan Smith, Geoffrey Hortin Smith, John Hare Smith, Thomas Edward Mears Guest Smith, Eric Stafford, Norman Webster Noel Stansbury, Charles Raymond Steele, Thomas Oakeley Dyne Steel, B.A. Cantab., Norman Leslie Story, Benjamin Barrow Strong, Laurence Arthur Sylvester, Arthur Thomas Reginald Symonds, B.A. Cantab., Eric Dunstan Syson, B.A. Oxon., Walter Leslie Tee, Charles Alexander Rennie Thomas, Richard Leonard Thomas, Harold Wainwright Timms, B.A. Cantab., Hugh Vyvyan Melville Titley, John Frederick Vernon, Stephen Francis Villiers-Smith, B.A. Oxon., John Eardley Vine, Benjamin Hoyle Waite, Harold Argyle Wardle, John Trevor Verity Watson, William Henry Orme Wedlake, Philip Lawrence Welford, LL.B. Manchester, Frank Ernest White, B.A. Cantab., Charles Parkin Whitehead, B.A. Oxon., George Winston Whitehead, George Wightman, Surtees Wilkinson, B.A. Cantab., John Llewellyn Williams, Eric Wilson, Oswy Errington Wilson, Richard William George MacGregor Wilson, Thomas Howarth Wolverson, B.A. Cantab., Edwin Yates, LL.B. Manchester.

No. of Candidates, 333. Passed, 264.

Gray's Inn.

The Right Hon. Lord Atkin of Aberdovey was entertained in Gray's Inn Hall on Friday, the 30th ult., at a House Dinner given to celebrate his appointment as a Lord of Appeal in Ordinary.

Lord Atkin became a student of Gray's Inn, in 1887, and was called to the Bar in 1891. In 1906 he was elected a Master of the Bench and in 1914 served the office of Treasurer.

The Treasurer, Mr. R. E. Dummett, presided at the dinner, and proposed the toast "Master The Right Hon. Lord Atkin of Aberdovey." Lord Birkenhead supported the toast, and Lord Atkin replied. The toast of "The Treasurer" was proposed by Sir Miles Mattinson, K.C.

Dinner was served both in the hall and the gallery, every available seat being occupied. Barristers and students gave Lord Atkin an enthusiastic reception.

The following Masters of the Bench were present in addition to the Treasurer and those already named:—

Mr. Thomas Terrell, K.C., The Right Hon. Sir Plunket Barton, Bart., K.C., The Right Hon. Lord Merrivale, Mr. Edward Clayton, K.C., Mr. Arthur Gill, Mr. Timothy Healy, K.C., His Honour Judge Herbert-Smith, His Honour Judge Ivor Bowen, K.C., Sir Alexander Wood Renton, K.C.M.G., K.C., Mr. W. Clarke Hall, The Hon. Sir Cecil Walsh, The Hon. Vice-Chancellor Courthope Wilson, K.C., Sir Walter Greaves-Lord, K.C., M.P., Mr. G. D. Keogh, Mr. Bernard Campion, K.C., Mr. J. W. Ross-Brown, K.C., Mr. James Whitehead, K.C., Mr. Frederick Hinde, Mr. R. Storry Deans, M.P., Mr. A. Andrewes Uthwatt, and Mr. Malcolm Hilbery, with the Under-Treasurer (Mr. D. W. Douthwaite).

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Hall on Tuesday, the 3rd inst. (Chairman, Mr. H. M. Pratt), the subject for debate was: "That in the opinion of this house the case of *Tredegar* v. *Harwood*, 1928, 1 Ch. 59, was wrongly decided." Mr. G. E. Walker opened in the affirmative and Mr. E. E. Pugh seconded, whilst Mr. C. B. Head opened in the negative, seconded by Mr. J. Kenneth Jackson. The following members also spoke: Messrs. M. C. Batten, E. F. Iwi, W. M. Pleadwell, W. F. Archer, J. C. Christian-Edwards, Miss D. C. Johnson, and Mr. H. A. Hudson (visitor). The opener having replied, and the chairman having summed up, the motion was put and lost by one vote. There were thirteen members and one visitor present.

Mr. F. D. HAMMOND, solicitor, has been unanimously elected President of The Solicitors' Managing Clerks' Association for the ensuing year. Mr. Hammond was admitted in 1925.

Legal Notes and News.

Honours and Appointments.

Mr. ROBERT H. ORME, solicitor, the Deputy Clerk, has been appointed Clerk to the Ampthill Urban District Council in succession to Mr. A. T. Trethewey. Mr. Orme is a member of the firm of Sharman & Trethewey, and was admitted in 1909.

Mr. C. F. NICHOLSON, solicitor, Deputy Town Clerk and Deputy Clerk of the Peace of the County Borough of Swansea, has been appointed Town Clerk of Folkestone. Mr. Nicholson was admitted in 1914.

Resignations, etc.

Generous tributes were paid at a recent meeting of the Surrey County Council to the ability and efficiency of Mr. Ramsay Nares, Deputy Clerk to the County Council, who retired on the 31st ult., after twenty-five years' service with the council.

Mr. A. G. Broome, solicitor, Town Clerk of Bacup, has resigned that appointment.

Mr. T. P. Whateley, solicitor, Town Clerk of Godalming (an appointment he has held for many years) has tendered his resignation. Mr. Whateley (who was admitted in 1888) also holds the appointment of Clerk to the Borough Justices, Commissioner of Taxes, Burial Board and Old-age Pensions Committee.

Wills and Bequests.

Sir Francis Du Pre Oldfield, Palace-court, Bayswater, Professor of Jurisprudence in the Manchester University, formerly Vice-Chancellor of the University of Madras, and a Judge of the Madras High Court, left unsettled property valued for the purposes of the English grant of the gross value of £20,396.

Mr. Charles James Veasey, solicitor, of Langley, Oxted, Surrey, left estate of the gross value of £23,906.

VIENNA LAND REGISTERS.

The Department of Overseas Trade announces that the Foreign Office has been informed by the Austrian Minister in London that, in the work of reconstructing the land registers destroyed by fire at the Palace of Justice in Vienna (concerning which a press note was issued on 9th November, 1927) it has been possible to reconstruct about one-third of the land books (Grundbücher) of the Vienna districts I to IX and XX. This reconstruction was made *ex-officio* by making use of parts of the land book register which were saved; and the hypothecary rights, as far as they could be established, have been entered in the new folios of the land books. But as part of the registers, although a small part only, was also destroyed by fire, it may be possible that some of the entries do not correspond with the actual legal state of affairs, and, in particular, the entry of some hypothecary rights may have been omitted.

For this reason, and in accordance with the legal provisions in force for the compilation of land books, the High Provincial Court of Vienna (Oberlandesgericht Wien) has, by means of an edict, called upon all persons to give notice on or before the 30th April, 1928, to the Provincial Court for Civil Proceedings in Vienna (Landesgericht fur Zivilrechtsachen in Wien) of any real right to which they are entitled, and which may not have been entered in the new folios. Within the same period of time all persons who feel that their rights are injured by the existence or the order of sequence of an entry made in the new folios, will have to raise their objections to such entry or entries at the Court. If no notice is given or no objection raised within the time fixed, the contents of the new folios will attain the validity in law of an entry in the land book, and objections cannot be raised in respect of persons who, relying on the land book, have acquired a right or rights.

A list of the real estates for which the new land book was opened is included in the edict of the Higher Provincial Court of Vienna.

Notices as well as objections are free from stamp duty and fees.

Persons interested in any of these real estates should therefore be advised to have the contents of the respective folio or folios of the land book examined in time.

It is added that in three months the land book will probably be opened for a further number of real estates, where a similar procedure of rectification will be followed.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate 4½%. Next London Stock Exchange Settlement Thursday, 26th April, 1928.

	Middle Price 11th April	Interest Yield.			Yield with Redemption.		
		£	s.	d.	£	s.	d.
English Government Securities.							
Consols 4% 1957 or after	87	4	12	0	—		
Consols 2½%	56⅜	4	8	0	—		
War Loan 5% 1929-47	103⅛	4	16	6	4	18	9
War Loan 4½% 1925-45	98	4	12	0	4	16	6
War Loan 4% (Tax free) 1929-42	100¼	4	0	0	4	0	0
Funding 4% Loan 1960-1990	93	4	6	0	4	14	0
Victory 4% Bonds (available for Estate Duty at par) Average life 35 years	93½	4	6	0	4	7	0
Conversion 4½% Loan 1940-44	98	4	12	0	4	16	0
Conversion 3½% Loan 1961	77¾	4	10	0	—		
Local Loans 3% Stock 1921 or after	65½	4	12	0	—		
Bank Stock	262xd	4	11	0	—		
India 4½% 1950-55	94½	4	15	6	5	0	0
India 3½%	71	4	19	0	—		
India 3%	61	4	19	0	—		
Sudan 4½% 1939-73	95	4	15	0	4	17	0
Sudan 4% 1974	83xd	4	16	0	4	17	0
Transvaal Government 3% 1923-53 (Guaranteed by British Government, Estimated life 19 years)	84	3	13	0	4	6	0
Colonial Securities.							
Canada 3% 1938	86	3	12	0	4	18	0
Cape of Good Hope 4% 1916-36	93	4	6	0	5	0	6
Cape of Good Hope 3½% 1929-49	82	4	6	0	5	0	0
Commonwealth of Australia 5% 1945-75	100	5	0	0	5	2	6
Gold Coast 4½% 1956	94	4	15	6	4	17	6
Jamaica 4½% 1941-71	93	4	16	0	4	18	6
Natal 4% 1937	93	4	5	0	5	0	0
New South Wales 4½% 1935-45	91	4	19	0	5	7	0
New South Wales 5% 1945-65	99	5	1	0	5	3	0
New Zealand 4½% 1945	96	4	13	0	4	17	6
New Zealand 5% 1946	104	4	16	6	4	16	6
Queensland 5% 1940-60	98	5	2	0	5	3	0
South Africa 5% 1945-75	103	4	17	6	5	0	0
South Australia 5% 1945-75	99	5	1	0	5	0	0
Tasmania 5% 1945-75	101	4	19	0	5	0	0
Victoria 5% 1945-75	99	5	1	0	5	0	0
West Australia 5% 1945-75	99	5	1	0	5	2	0
Corporation Stocks.							
Birmingham 3% on or after 1947 or at option of Corporation	63	4	15	6	—		
Birmingham 5% 1946–56	102	4	18	0	4	17	0
Cardiff 5% 1945–65	102	4	18	0	4	18	0
Croydon 3% 1940–60	70	4	5	6	5	0	0
Hull 3½% 1925–55	78	4	10	0	5	0	0
Liverpool 3½% Redeemable at option of Corporation	74	4	14	6	5	0	0
Ldn. Cty. 2½% Con. Stk. after 1920 at option of Corpn.	55	4	11	0	—		
Ldn. Cty. 3% Con. Stk. after 1920 at option of Corpn.	65½	4	12	6	—		
Manchester 3% on or after 1941	64	4	13	6	—		
Metropolitan Water Board 3% 'A' 1963–2003	64	4	13	0	4	17	0
Metropolitan Water Board 3% 'B' 1934–2003	65½	4	12	6	4	15	6
Middlesex C. C. 3½% 1927–47	83	4	5	6	4	17	0
Newcastle 3½% Irredeemable	72	4	17	0	—		
Nottingham 3% Irredeemable	63xd	4	15	6	—		
Stockton 5% 1946–66	102	4	18	0	4	19	0
Wolverhampton 5% 1946–56	—	—			—		
English Railway Prior Charges.							
Gt. Western Rly. 4% Debenture	83	4	16	6	—		
Gt. Western Rly. 5% Rent Charge	100	5	0	0	—		
Gt. Western Rly. 5% Preference	99	5	1	0	—		
L. & N. E. Rly. 4% Debenture	79	5	1	0	—		
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Continued from page xii.

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